

THE HIGH COURT OF SINDH, KARACHI

Spl. Cr. Bail Appl. Nos. 17, 18 & 19 of 2024

- Spl. Cr. Bail No.17/2024 : Attaullah son Allah Diwayo Khushik and Amir son of Sajid.
- Spl. Cr. Bail No.18/2024 : Naseebo Khan son of Ali Hassan and Muhammad Wafa Brohi son of Fatahuddin.
- Spl. Cr. Bail No.19/2024 : Amjad Ali son of Karim Bux and Vijesh Kumar son of Radha Kirshan.
- For the Applicants : M/s. Nasrullah Korai and Shokat Ali Bhanbhro, Advocates.
[In Spl. Cr. Bail Appl. No.17/2024]
- Mr. Shah Muhammad Zaman, Advocate.
[In Spl. Cr. Bail Appl. No.18 & 19 of 2024]
- The State : Mr. Ashiq Ali Anwar Rana, Special Prosecutor Customs; Ms. Alizeh Bashir, Assistant Attorney General for Pakistan; and I.O. Ilyas Gichi.
- Date of hearing : 14-03-2024
- Date of order : 14-03-2024

*FIR No. M-4070/DCI/Seiz/2024
u/s: 2(s), 16, 157(1) & 178 of the Customs
Act, 1969, punishable under clauses (8) & (89)
of sub-section (1) r/w sub-section (2) of
section 156 & section 157(2) of the Act, ibid
P.S. Directorate General I & I-Customs, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicants of these bail applications seek post-arrest bail in the aforesaid crime after the same was declined by the Special Judge (Customs, Taxation & Anti-Smuggling), Karachi vide a common order dated 19.02.2024.

2. As per the FIR and mashirnama, on 24.01.2024 at 03:00 hours, on a tip-off, the Anti-Smuggling Unit of the Directorate of Intelligence & Investigation-Customs conducted a search under section 163 of the

Customs Act at a warehouse at the Industrial Zone, Port Qasim Authority, to find a 174 feet long tunnel under the warehouse leading to a section of PARCO's White Oil Pipeline where a connection was improvised to extract/steal non-custom paid diesel, which was then being filled in a container and two trucks *via* a pipe. The warehouse was found in the possession of the Applicant Vijaish Kumar as tenant thereof, and the other Applicants were alleged to be involved in the illegal activity. All of them were arrested from the spot. The container and trucks were seized with the stolen diesel which weighed at 58,667 liters and valued at Rs. 44,966,108/-.

3. Heard the learned counsel and perused the record.

4. As per the I.O., the White Oil Pipeline of PARCO from which diesel was being stolen, runs from Karachi to Muzaffargarh and is used for safe transshipment of imported diesel to other customs stations where customs duty is paid for clearance by the importing Oil Marketing Companies. In other words, the Applicants have been booked for "en-route pilferage of transit goods", an act which appears to be covered by the definition of 'smuggle' in section 2(s) of the Customs Act *albeit* the punishment specifically prescribed for such offence is in clause 63(i) of section 156(1) of the Customs Act, being imprisonment for a term which may extend to seven years.

5. As per the interim challan, the investigation thus far has revealed that the pilferage operation was devised by the absconding accused Lutif Siyal and his brother Mir Murtaza; that in collaboration with them, the warehouse was taken on rent by Vijaish Kumar and mustard-oil-extracting machines were installed to give cover to the pilferage operation; that during the day-time, the warehouse would be used as a mustard-oil extraction mill, and at night-time a team of laborers brought in by Lutif Siyal and Mir Murtaza would dig the tunnel to the White Oil Pipeline; that the tunnel was done in 15-20 days, whereafter they started extracting the diesel from the Pipeline; that the stolen diesel was filled into container trucks and escorted to a

godown where it was delivered/sold to the absconding accused Haji Aziz.

6. Apart from Vijaish Kumar whose role is discussed above, the interim challan also assigns separate roles to the other Applicants. Therefore, to consider bail, the role assigned to them will require a brief examination.

7. The role assigned to Attaullah is that he was brought into the operation by Mir Murtaza and made responsible for ensuring that the container/trucks with the stolen diesel reach the godown in Korangi for delivery/sale to Haji Aziz; and for such purpose Attaullah used to drive ahead of the container/trucks to escort them to the destination.

8. The role assigned to Aamir Ali was that he was the laborer employed for crawling through the tunnel to operate the valve of the pipe connected to the White Oil Pipeline each time the extraction was planned. On interrogation he said that he was brought to the warehouse on the promise of a salary but was only paid Rs. 5000/- by Vijaish Kumar.

9. Amjad Ali was employed by Vijaish Kumar to work as a mechanic at his mustard-oil-extraction mill at Bhains Colony. Recently, he was also looking after the mustard-oil-extraction machines installed at the warehouse in question. On interrogation he stated that when he saw the digging of the tunnel at the warehouse he expressed his concern to Vijaish Kumar, but the latter offered him extra payment to remain silent.

10. Naseebo Khan and Muhammad Wafa Brohi were chowkidars deployed at the warehouse. On interrogation they allegedly stated that they got the job through Amjad Ali on the instructions of Vijaish Kumar; that when they saw the digging of the tunnel, they left the job, but were lured back by Amjad Ali with a promise of extra payment.

11. The Applicant Vijaish Kumar has been assigned an instrumental role in the pilferage operation as the person who provided cover to the same under the garb of a mustard-oil-extracting mill. The investigation finds him as a partner in crime with Lutif Siyal. Similarly, the Applicant Attaullah too has been assigned a direct role in the pilferage operation as the person who escorted the vehicles loaded with the stolen diesel for delivery to the buyer. Both were arrested from the spot and thus the argument that they have been falsely implicated does not augur support. They do not make out a case for the grant of bail.

12. However, the case against the Applicants Naseebo Khan, Muhammad Wafa Brohi and Amjad Ali is on a different footing. It appears that the first two were hired as chowkidars for a warehouse ostensibly running a mustard-oil-extraction mill, and the latter as a mechanic for such machinery. Though it is alleged that they had knowledge of the on-going pilferage operation, but the investigation thus far does not suggest that were directly involved in the same or were given proceeds from the same. At present, the case against them appears to be for violating section 192 of the Customs Act, i.e. for failing to report the pilferage operation, an offence punishable under clause 86 of section 156(1) of the Customs Act, punishable at most by imprisonment of one year. The allegation that they too were part of the pilferage operation requires further inquiry and therefore they make out a case for grant of bail.

13. As regards Aamir Ali, he appears to be a lowly laborer hired for the sole purpose of taking the risk of crawling through the tunnel to operate the valve of the pipe connected to the White Oil Pipeline each time he was asked to do so. The investigation does not suggest that he was a skilled worker or that he shared in the proceeds of the crime. Therefore, the offence committed by him does not appear at par with the others, but that aspect of the matter can only be adjudged after trial, and to keep him behind bars till such time does not serve any purpose.

14. For the foregoing reasons, bail is denied to Vijaish Kumar and Attaullah. However, bail is granted to Naseebo Khan, Muhammad Wafa Brohi, Amjad Ali and Aamir Ali subject to furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand only) each, along with P.R. Bond in like amount to the satisfaction of the trial court.

Needless to state that observations herein are tentative and nothing shall be construed to prejudice the case of either side at trial.

The office shall place this order in all three bail applications.

JUDGE

*PA/SADAM